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is that Dr. Kidder's statement can not be true, because he speaks as a surgeon, while the respondent is a physician, and a physician can not be expected to recognize post mortem conditions and indications. How much more, then, would the jury, wholly untrained in such matters, require the assistance of an expert to appreciate the significance of the physical appearance of this diseased larynx.

In sustaining the admission of this evidence we are doing no more than is always done in a malpractice case, wherein a duly qualified physician is allowed to testify to the local standard of professional skill, and that a given course of treatment did or not meet its requirements, though the witness be of more professional prominence than the doctor whose treatment is in question and practices elsewhere. (*Willard v. Norcross*, 86 Vt. 426, 85 Atl. 904.) In such cases the expert is giving the jury information as to the progress and condition of local professional knowledge, and that is all that was done here.

Other medical witnesses testified to like effect, but need not be specially referred to.

* * * * *

There was no error in admitting the reports from the State laboratory on the cultures taken from the throat of Leroy Hyde. These were taken by the respondent between November 14 and 26, 1910, and sent by him, and the reports came back to him. Some, he admitted, were positive. They had the same bearing upon the main issue that the other evidence regarding the previous cases of diphtheria at Tyson had—they added to the sum of the respondent's knowledge another circumstance which a thoughtful juror would consider before deciding the main question.

* * * * *

Judgment that there is no error, and that the respondent takes nothing by his exceptions.

Let execution of sentence be done.

COURT OF APPEALS OF KENTUCKY.

Local Board of Health—Powers of—Regulations—Bottling of Milk.

BOARD OF HEALTH OF COVINGTON ET AL. *v.* KOLLMAN, 160 S. W., 1052. Decided December 9, 1913.

Plaintiff, a dairyman, refused to comply with the regulation of the Board of Health of Covington, Ky., relative to the bottling of milk, claiming that it was invalid, and brought suit to enjoin the board from prosecuting him for selling milk without a permit and to compel the issuance to him of a permit. He was successful in the circuit court, but the case was reversed on appeal. The opinion is given in full.

CLAY, C.: In the year 1909 the general council of the city of Covington enacted an ordinance covering the sale of milk and other dairy products and regulating the sanitary condition of dairies and milk depots and the condition and use of utensils, vehicles, etc., used in handling, manufacturing, or sale of milk and dairy products in Covington, Ky., and repealing certain ordinances of the city of Covington. The ordinance conferred on the board of health powers of inspection and examination. It further provided as follows: "Upon the board of health of the city of Covington being satisfied that the place or places where the milk or milk products are to be kept or offered for sale, or from which they are obtained, are sanitary, or that the cows from which said milk is obtained are free from disease and kept in a sanitary place and manner, said board of health shall grant a permit to the applicant conditioned upon his compliance with the terms of this ordinance and the rules and regulations of the State board of health and board of health of the city of Covington. Said permit may be revoked at any time by the board of health of Covington, Ky., should the holder thereof fail or refuse to comply with the provision of this ordinance."

On January 31, 1912, the board of health of the city of Covington adopted the following rule:

"Be it resolved by the board of health of the city of Covington, State of Kentucky, That the following regulations are necessary for the public health and are therefore regulations of this board:

"SECTION 1. No person or dealer in milk and no servant or agent of such dealer in milk, except such as may sell for consumption upon the premises where sold, shall give, furnish, sell, or offer for sale or deliver any whole milk, skimmed milk, or cream in quantities less than 1 gallon, unless said milk or cream be in sanitary transparent glass bottles or other receptacles of similar character as may be approved by this board, the same to be sealed with a suitable cap or stopper. The said bottle or other receptacle shall be sealed immediately after filling the same, which sealing and filling shall only be done in a milk house or creamery, the sanitary condition of which has been approved by this board.

"SEC. 2. It shall be unlawful to fill or refill with sweet milk or cream any glass jar or bottle or other receptacle with intent to sell or vend such milk unless such glass jar or bottle be first thoroughly cleaned and sterilized, unless a nonrefillable receptacle be used, and they must be perfectly sterile when filled.

"SEC. 3. No person, dealer, servant or agent of such a dealer shall give, furnish, sell, or offer for sale milk, skimmed milk, or cream in quantities exceeding 1 gallon unless the can or receptacle be filled in milk room or creamery, the same to be immediately and securely sealed by a tight-fitting top or cap.

"SEC. 4. No person shall transfer any milk from one can, bottle, or other receptacle to another on any street, alley, or thoroughfare or upon a delivery wagon or other vehicle or in any exposed place in the city of Covington, Ky.

"SEC. 5. This ordinance shall take effect and be in force from and after May 1, 1912."

Plaintiff, Henry Kollman, a dairyman engaged in the business of selling milk by retail in the city of Covington, refused to comply with the regulation of the board of health in regard to bottling his milk, and for this reason was refused a permit to sell milk in the city of Covington. Alleging that the regulation of the board of health with reference to the bottling of milk was invalid, plaintiff brought this action to enjoin the board of health and its health officer from prosecuting him for selling milk without a permit, and to compel the board of health to issue him a permit. The case being submitted on the pleadings, exhibits, and agreed facts, plaintiff was granted the relief prayed for, and from the judgment so entered the board of health and J. M. O'Maley, its health officer, appeal.

It is the contention of plaintiff that the powers conferred on local boards of health do not authorize them to adopt a regulation of the character of the one in question, and, that being true, the board of health of the city of Covington, which was a mere administrative agent of the city to look after the enforcement of the ordinance enacted by the general council, has no power to enact rules and regulations in addition to and inconsistent with the provisions of the ordinance under which it acts. In this connection it is pointed out that the ordinance in question is very comprehensive. It deals with every phase of the dairy and milk business. It does not require the bottling of milk, but by using the words "cans and vessels" impliedly authorizes the use of other receptacles than bottles. There might be much merit in plaintiff's contention if the powers of the local board of health were derived solely from the general council. Such, however, is not the case. It is the mandatory duty of the general council of every city having a population of not less than 2,500 inhabitants to appoint a board of health; the number of its members varying according to the city's population. In such cities the local boards of health are invested with the same powers as the county local boards. (Kentucky Statutes, sec. 2059.) That the legislature may create local boards of health and confer on them authority to make reasonable regulations for the health of their community is well settled. (*Hengehold v. City of Covington*, 108 Ky., 752; 57 S. W., 495; 22 Ky. Law Rep., 462.)

Section 2055, Kentucky statutes, provides in part as follows: "Such local boards are empowered and it shall be their duty to inaugurate and execute and to require the heads of families and other persons to execute such sanitary regulations as the local board may consider expedient to prevent the outbreak and spread of cholera, smallpox, yellow fever, scarlet fever, diphtheria, and other epidemic and communicable diseases, and to this end may bring the infected population under prompt and proper treatment during the premonitory or other stages of the disease, and they are empowered to go upon and inspect any premises which they may believe are in an unclean or infectious condition, and it shall be empowered to fix and determine the location of an eruptive hospital for the county, sufficiently remote from human habitation and public highways as in its judgment is safe, and said boards are authorized and shall have power to enforce the rules and regulations adopted by the State board of health, * * * and such local board shall make report to the State board of health at least once in every three months—first, the character of the infectious, epidemic, and communicable diseases prevailing in their county; second, the number reported as afflicted with such disease; third, the action taken by such board in arresting the progress of such epidemics, and the visible effects of such action, and shall also make special reports when they deem it expedient or when required by the State board, and the local board shall receive no compensation for such service."

Section 2057, Kentucky Statutes, is as follows: "The State board of health and the local boards shall have power and authority to examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants within any county in this State, or in any vessel within any harbor or port in any county in this State; and whenever any such nuisance, source of filth, or cause of sickness shall be found to exist on any private property, or in any vessel within any port or harbor of any county in this State, or upon any water course in this State, the State board of health, or local board of health, shall have power and authority to order, in writing, the owner or occupant thereof, at his own expense, to remove the same within 24 hours or within such reasonable time thereafter as such board may order, and if the owner or occupant shall neglect so to do, he shall be fined not less than \$10 nor more than \$100, and each day's continuance of such nuisance, or source of filth, or cause of sickness, after the owner or occupant thereof shall have been notified to remove the same, shall be a separate offense."

It will be observed that by the foregoing sections local boards are empowered, and it is made their duty, to execute such sanitary regulations as the local board may consider expedient to prevent the outbreak of cholera, smallpox, yellow fever, scarlet fever, diphtheria, and other epidemics and communicable diseases. Such local boards are further empowered to examine into all nuisances, sources of filth, or causes of sickness that in their opinion may be injurious to the health of the inhabitants within any county of the State. We are not inclined to take the narrow view that the broad powers thus given can only be exercised by local boards where an epidemic actually exists or where the cause of sickness is such as to amount to a nuisance. It is well settled that the powers of such boards, conferred for the protection of the public health, should be liberally construed in order to effectuate the purpose of the legislature. (*Gregory v. City of New York*, 40 N. Y., 273; *City of Bardstown v. Nelson County*, 78 S. W., 169; 25 Ky. Law Rep., 1478; *Allison v. Cash*, 143 Ky., 679; 137 S. W., 245; *Hengehold v. City of Covington*, 108 Ky., 752; 57 S. W., 495; 22 Ky. Law Rep., 462.) The most effective way to prevent disease is to remove the cause thereof. Therefore local boards are given the power not only to prevent the spread of epidemic and communicable diseases but to prevent their outbreak, and to this end are given the further power to examine into and abate such causes of sickness as may in their opinion be injurious to the health of the inhabitants within any county of the State.

But it is insisted that the sale of milk in cans is not shown to be such cause of disease as to justify the regulation in question, and that to give such a construction to the statute would open the way for health boards to adopt all sorts of fads. In response to the first contention, however, it is sufficient to say that it is a recognized fact that numerous diseases result from the careless handling of milk, and that cans are not as sanitary as sealed bottles. Being the agency created by the legislature to prevent the outbreak and spread of disease and to remove causes of sickness, the presumption is always in favor of the board of health, and its action will not be interfered with unless it appear unreasonable or oppressive. The fact that its membership may sometimes be composed of extremists is no reason for denying the power conferred by the legislature. Nor should we be controlled by the fact that a scientific theory of to-day may be discarded to-morrow. In matters affecting the public health it is the part of reason and common sense to adopt the best scientific thought of the age in which we live. If research and investigation lead to other accepted theories, then we must adopt them. Were the rule otherwise, both the courts and the legislature would be without a competent guide. Viewing the matter in the light of the accepted theories of science at the present time, a regulation of a local board of health requiring milk to be handled in sealed transparent bottles is neither unreasonable nor oppressive.

Being of the opinion that the board of health of the city of Covington had power to adopt the regulation in question, and that the regulation was reasonable, it follows that the lower court erred in granting plaintiff the relief prayed for.

Judgment reversed, and cause remanded, with directions to dismiss the petition.

SUPREME COURT OF THE UNITED STATES.

Food and Drugs Act—Adulteration of Foodstuffs.

UNITED STATES V. LEXINGTON MILL & ELEVATOR CO. Decided Feb. 24, 1914.

The fifth subdivision of section 7 of the United States food and drugs act (34 Stat. L., 768) provides that food shall be deemed to be adulterated if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health.

The statute upon its face shows that the primary purpose of Congress was to prevent injury to the public health by the sale and transportation in interstate commerce of misbranded and adulterated foods.

In prosecutions under the fifth subdivision of section 7, the Government must establish, in order to secure a verdict of condemnation under the statute, that the added poisonous or deleterious substances may render the article of food injurious to health.

The opinion is printed in full.

DAY, J.: The petitioner, the United States of America, proceeding under section 10 of the food and drugs act (34 Stat., 768), by libel filed in the District Court of the United States for the Western District of Missouri, sought to seize and condemn 625 sacks of flour in the possession of one Terry, which had been shipped from Lexington, Nebr., to Castle, Mo., and which remained in original unbroken packages. The judgment of the district court, upon verdict in favor of the Government, was reversed by the Circuit Court of Appeals for the Eighth Circuit (202 Fed., 615), and this writ of certiorari is to review the judgment of that court.

The amended libel charged that the flour had been treated by the "Alsop process," so called, by which nitrogen peroxide gas generated by electricity was mixed with atmospheric air and the mixture then brought in contact with the flour, and that it was thereby adulterated under the fourth and fifth subdivisions of section 7 of the act, namely (1) in that the flour had been mixed, colored, and stained in a manner whereby damage and inferiority was concealed and the flour given the appearance of a better